

General Information Letter: An individual may take the education expense credit into account in determining his or her required estimated tax installment.

September 11, 2000

Dear:

This is in response to your telephone inquiry of September 8, 2000, in which you request a letter ruling. The nature of your request and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at www.revenue.state.il.us.

In our telephone conversation, you asked if it is permissible for a taxpayer to take into account the education expense credit he or she expects to receive under Section 201(m) of the Illinois Income Tax Act (the "IITA"; 35 ILCS 5/101 *et seq.*), in light of the litigation that has been brought challenging the constitutional validity of that credit.

Response

Section 804 of the IITA imposes a penalty for failure to make timely payments of a required installment of estimated income taxes owed by the taxpayer. The penalty for calendar year 2000 is set by Section 3-3(b-10) of the Uniform Penalty and Interest Act (the "UPIA"; 35 ILCS 735/3-1 *et seq.*). Section 804(c)(1)(A) of the IITA provides that each required installment is 25% of the required annual payment, which is in turn defined in Section 804(c)(1)(B) to mean the lesser of (i) 90% of the tax shown on the return for the year or (ii) 100% of the tax shown on the return for the prior year. Section 804f) of the IITA provides that:

For purposes of subsections (b) and (c), the term "tax" means the excess of the tax imposed under Article 2 of this Act, over the amounts credited against such tax under Sections 601(b) (3) and (4).

Section 3-8 of the UPIA provides that no penalty is due under Section 3-3 if the taxpayer has "reasonable cause" for failing to pay estimated taxes on time.

Because the education expense credit is provided in Section 201(m) of the IITA, which is itself part of Article 2 of the IITA, this provision allows a taxpayer to take the credit into account in computing his or her required installments of estimated tax under Section 804(c)(2)(B)(i) of the IITA. The decision of a court holding that the credit is not constitutionally valid or enjoining the allowance of the credit might change this conclusion. However, a taxpayer who has underpaid a required installment of estimated tax due prior to such decision solely by reason of taking the credit into account in computing that installment would have reasonable cause for such underpayment, and so would not be subject to penalty under the UPIA.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual

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situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b). If you have any further questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton
Deputy Chief Counsel -- Income Tax